

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION THIRTY-THREE**

CONSOLIDATED FREIGHTWAYS  
CORPORATION OF DELAWARE<sup>1</sup>

Employer

and

GENERAL DRIVERS AND HELPERS  
TEAMSTERS LOCAL UNION NO. 421,  
AFFILIATED WITH INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO<sup>1</sup>

Petitioner

33-RC-4566

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>2</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>4</sup>

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<sup>1</sup> The Employer's name appears as amended at the hearing. I have administratively noted and added the Petitioner's proper affiliation.

<sup>2</sup> I have carefully considered the record evidence, the parties' statements and arguments on the record and the briefs filed by the parties.

<sup>3</sup> The Employer, a Delaware corporation, is a common carrier engaged in the business of transporting freight throughout the United States with a number of facilities including terminals in Cedar Rapids and Dubuque, Iowa. During the past calendar year, a representative period of time, the Employer provided services valued in excess of \$50,000 directly to customers located outside the State of Iowa.

<sup>4</sup> The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and I so find.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for reasons set forth infra.

5. The parties are in agreement in regards to the scope of the unit herein and stipulated to the general description of the unit. The parties also stipulated that Jay Ilten, terminal manager, and Georgia Willging, terminal supervisor, are supervisors within the meaning of the Act possessing various indicia of supervision including the authority to discipline and discharge employees.

The parties are also in agreement that Brad Conlin, the sales executive employed at the Dubuque facility, lacks a community of interest with the employees within the unit found appropriate, and should be excluded from the unit found appropriate herein, and I so find. The unit as petitioned for would include two persons – general clerk Kim Drouillard and terminal supervisor Carol Schemmel. The Employer contends that Schemmel is a supervisor within the meaning of the Act and should be excluded from any unit found appropriate herein. Contrary to the Employer, the Petitioner maintains that Schemmel is not a supervisor under 2(11) of the Act, and should be found to be an employee and included in any unit found appropriate herein. As discussed below, I find that Schemmel is a supervisor. The exclusion of Schemmel as a supervisor leaves Kim Drouillard as the sole member of the petitioned clerical unit. Inasmuch as it is contrary to Board policy to certify one-person units, the petition herein must be dismissed. San Francisco Art Institute, 226 NLRB 1251, 1252 (1976); Sonoma-Marín Publishing Company, 172 NLRB 625, 626 (1968).

## **BACKGROUND**

The Employer is a large common carrier engaged in the business of the interstate and international transportation of freight. The Employer handles a variety of commodities and freight of all kinds of descriptions, weights and classifications. The Employer primarily transports such freight by trucks with its core business in North America. It employs approximately 22,000 employees and maintains approximately 350 terminals throughout North America. Pertinent to this matter, the Employer has terminals in Cedar Rapids and Dubuque,

Iowa. Jay Ilten is the terminal manager and is in charge of the day-to-day operations of both facilities. Generally, Ilten weekly spends approximately three days at the Cedar Rapids facility and two days at the Dubuque facility. The distance between the two terminals is only seventy-five miles so Ilten sometimes spends partial days at each terminal. There are approximately twenty-eight employees employed at or out of the Cedar Rapids terminal. The parties are in agreement that the scope of the petitioned-for unit is limited to the Dubuque, Iowa facility.

### **The Dubuque Facility**

The Dubuque facility employs approximately fifteen people, including terminal manager Jay Ilten. Aside from Ilten, the Dubuque complement includes three transport drivers, also referred to as road or over-the-road drivers; seven city drivers (one is currently on a leave of absence); three clericals; and the sales executive, Brad Conlin. The three transport operators and the seven city drivers are, and have been for years, represented by the Petitioner herein. The three transport operators are over-the-road drivers and are responsible for moving Dubuque freight to the Employer's primary midwest hubs, generally Chicago, Kansas City or Indianapolis. The city drivers are "combination" drivers who unload incoming freight in the morning and evening as well as being responsible for the delivery of the incoming freight and the pick up of freight that is moving out of the Dubuque area. Sales executive Brad Conlin is generally involved in sales and sales promotion relative to the Dubuque facility. As indicated above, Conlin lacks a community of interest with the petitioned-for employees and is excluded from the unit herein. The clerical component of the Dubuque facility is sought by the instant petition and will be discussed below.

### **The Clerical Employees at the Dubuque Facility**

There are three clericals employed at the Dubuque facility – Georgia Willging, Kim Drouillard, and Carol Schemmel. The Employer concedes that all three, regardless of their supervisory status, perform the functions and duties of the general clerk position during the course of their duties. Essentially, because of the small size of the Dubuque facility, there is not

enough work to justify a supervisory position that does not include the performance of the functions and duties of the general clerk. The Dubuque terminal operates on a five-day, two-shifts per day basis. Georgia Willging generally works from 5 or 5:30 a.m. to early afternoon. Kim Drouillard works from 8:45 a.m. until 5:15 p.m. Carol Schemmel's work day starts at 2:00 p.m. and extends until the facility's close which is generally at about 10:30 p.m. Willging is classified as a supervisor and referred to as the "day supervisor" by the Employer. As indicated above, the parties are in agreement and stipulated that Willging fulfills the indicia of a supervisor defined by Section 2(11) of the Act. Drouillard is classified by the Employer as a general clerk and the parties are in agreement that she is properly included in the bargaining unit. Schemmel is classified as a supervisor and referred to as the night supervisor by the Employer. Prior to her promotion and reclassification, Schemmel was classified as a general clerk. Contrary to the Employer, the Petitioner maintains that Schemmel continues to function as a general clerk and that despite her reclassification to supervisor, she does not function as a supervisor and does not have or exercise the requisite authority to be a supervisor within the meaning of the Act.

### **Carol Schemmel**

Schemmel was a general clerk until late April, 2000. According to the testimony of terminal manager Ilten, a supervisory position was needed for the evening because they "were having credibility issues with our drivers in the evening as to who was responsible for what and who has the authority to issue a directive to them." On April 11, 2000, Ilten requested permission from his district manager to eliminate one of the two general clerk positions and replace it with a supervisory position. The request was approved. Initially, the job was available to both Drouillard and Schemmel. Drouillard removed herself from consideration, with the Employer's concurrence, because the position would require the change of her work hours. Schemmel was reluctant to accept the new position. However, upon the Employer's insistence and with the understanding that her general clerk position was being eliminated by the Employer and replaced by the terminal supervisor position, she accepted the position effective as of April 24, 2000.

Upon her promotion, Schemmel's method of pay was changed from hourly to a weekly salary of \$750. Prior to her promotion, Schemmel had been earning approximately \$600 per week including overtime pay. Drouillard, the general clerk, currently makes sixteen dollars an hour or \$640 weekly before overtime. Schemmel does not receive overtime pay. Since her promotion, Schemmel has participated in two management training sessions. In August, 2000, she was part of training seminar concerning hazardous materials, accidents and other workplace safety issues. Also, in January of this year, she completed the Employer's week-long Front Line Supervisor Development Program held by the Employer in Kansas City.

The terminal supervisor job description, which is utilized at other facilities by the Employer, does not appear to precisely fit the work and duties of Schemmel. Both Schemmel and Georgia Willging, stipulated supervisor, have the same job description. The job description appears to describe the duties involving someone who "directly supervises 5 to 40 employees in the dock and city operation." The record indicates little, if any, responsibility for Schemmel in regards to the dock operation except through the assignment of load plans. Rather, it appears that her essential non-clerical work involves certain dispatching of drivers and the assignment of load plans to drivers. In respect to those duties, as well as her clerical duties, those tasks were part of her duties as a general clerk and did not change after she was designated a supervisor. Indeed, general clerk Drouillard also performs such work and makes similar assignments in the course of her duties. When assigning such work, judgment is exercised in order to determine how to load the trailers to move the freight in accordance with schedules and plans.

The record discloses that Schemmel has been given certain authority in respect to the discipline of other employees. Terminal Manager Ilten testified that Schemmel can issue warning letters as a step in the Employer's progressive discipline system, and in the case of employee gross insubordination or fighting, she can suspend, even discharge employees. Ilten further testified that she can take such actions independently and without his permission. While Schemmel has not suspended or discharged employees, she has issued a warning letter during her short tenure as terminal supervisor. On December 22, 2000, Schemmel issued a warning letter to driver Roger Waller citing "absenteeism and unavailability". While day terminal

supervisor Willging issued a similar letter relative to the impact of his conduct on her shift, the record indicates that Schemmel acted independently in the issuance of her letter. In a computer message to Ilten and Willging about Waller's not doing his run on the previous Thursday night, Schemmel exclaimed, "I'm really tired of Roger trying to run when he feels like it. Let's let the letters fly."

## **DISCUSSION AND DETERMINATION**

Supervisory status under the Act depends on whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term "supervisor" as:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgment. See Ohio Power Co. v. NLRB, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. Denied 338 U.S. 899 (1949). See also Queen Mary, 317 NLRB 1303 (1995).

Applying Section 2(11) to the duties and responsibilities of any given person requires that the Board determine whether the person in question has authority to use independent judgment in performing any of the functions listed in Section 2(11), and to do so in the interest of management. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). As pointed out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7<sup>th</sup> Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect."

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, setup men and other minor supervisory employees.” See Senate Rep. No. 105, 80th Cong., 1st Sess. 4 (1947). The Board has long recognized “there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer’s plants and who incidentally direct the movements and operations of less skilled subordinate employees,” who nevertheless are not supervisors within the meaning of the Act since their authority is based on their working skills and experience. Southern Bleachery & Print Works, Inc., 115 NLRB 787, 791 (1956), enf’d 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enf’d. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961).

In addition, the party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989): “in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists.” Tucson Gas & Electric Co., 241 NLRB 181 (1979), Dickinson-Iron Agency, 283 NLRB 1029, 1034 (1987).

At the outset, it must be stated that while Carol Schemmel has been designated as a terminal supervisor and carries that title, it is well settled that “functions performed and the authorities possessed or exercised,” and not titles are determinative of supervisory status. D.H. Obermeyer Co., Inc., 196 NLRB 489, 791 (1972). However, based on my examination of Schemmel’s functions and authority, I find that the Employer met its burden proving that she possesses the supervisory powers specified in Section 2(11) in regards to discipline. Schemmel clearly has the authority to issue warning letters to employees and to do so independently and without the permission of Ilten. Although Schemmel has only issued one such letter, the process followed in that discipline indicates that Schemmel holds that authority and can exercise it on the basis of her own independent judgment. The Petitioner in its brief suggests that Schemmel’s

authority is diminished or negated by her reluctance to issue warning letters or otherwise discipline other employees. I disagree. An individual's supervisory status cannot be eluded by a failure or refusal to exercise granted authority. Orr Iron, Inc., 207 NLRB 863, 868 (1973). Nor does her limited exercise of her disciplinary authority to this point negate the fact that she has a full and constant *possession* of supervisory authority. Kern Counsel Services, 259 NLRB 817, 818 (1981), Great American Products, 312 NLRB 962, 965 (1993); Paintsville Hospital Co., 278 NLRB 724, 740 (1986). Moreover, her limited exercise of her disciplinary authority is explicable by her relatively recent assumption of her supervisory position and her early reluctance to engage in disciplinary matters. In respect to that reluctance, I find it significant that the Employer took steps, including the issuance of a warning letter to Schemmel for her failure to issue a warning letter to an employee, to impress her with the supervisory content of her job and the importance it had to the Employer.

I also find that Schemmel has the authority to suspend employees without the permission of Ilten. Although she has not exercised this authority and it is limited, the possession of this authority, particularly in regards to insubordination, is based on the Employer's expressed need for second shift drivers to follow her directions and I further find that its exercise would require independent judgment contemplated by Section 2(11) of the Act. Schemmel's disciplinary authority is precisely why the Employer created the second shift supervisory position she holds.

It is also noteworthy that the Employer changed Schemmel's mode of pay from hourly to salaried and gave her a substantial raise to assume her new authority. See Grand RX Drug Stores, 193 NLRB 525 (1971). Finally, I note that not only has the Employer held Schemmel out to employees as a supervisor, but that employees, including the Petitioner's steward, consider her as a supervisor and that they are bound by her directions as a result.

In light of the foregoing, I find that Carol Schemmel is a supervisor within the meaning of Section 2(11) of the Act. Since as discussed above, the Board will not certify a union as a representative of a one-person unit, I am dismissing the petition herein. Teamsters Local Union No. 115, 157 NLRB 588 (1966); Parklane Hosiery Co., Inc., 207 NLRB 991 (1973).



**ORDER**

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by March 9, 2001.

Dated: February 23, 2001  
at: Peoria, Illinois

/s/ Ralph Tremain  
Ralph Tremain, RD – Region 14

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